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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MATT TIGHE,

9 Plaintiff,

10 v.

11 KING COUNTY, SCOTT GARNETT,
12 SARAH GERLITZ,

13 Defendants.

CASE NO. 2:17-cv-01875-BAT

**ORDER GRANTING
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER**

14 On November 1, 2018, King County ("County"), Scott Garnett, and Sarah Gerlitz
15 ("Defendants") moved for an order narrowing the scope of Plaintiff Matt Tighe's October 25,
16 2018 Notice of 30(b)(6) Deposition. Dkt. 33 (motion noted November 9, 2018). At that time, the
17 parties were unable to resolve their dispute as to various topics (Topic Nos. 1, 4, 5, 6, and 8). *Id.*,
18 pp. 4-5. On November 8, 2018, Defendants produced three designees to testify regarding Topic
19 Nos. 1, 4, 5, and 6, and Plaintiff was satisfied with the examination. Defendants did not produce
20 a designee to testify regarding Topic No. 8. Dkt. 39, Second Declaration of Donna Bond, at ¶ 3,
21 Ex. A.

22 The parties agree that Topic No. 8 is the only disputed issue remaining for the Court's
23 consideration.

1 **BACKGROUND**

2 Plaintiff alleges violations of the Uniformed Services Employment Reemployment Rights
3 Act (USERRA), the Washington Law Against Discrimination (WLAD), and other civil rights
4 violations. Dkt. 1-2. Plaintiff alleges Defendants retaliated after he questioned his “re-hire”
5 testing when he returned to his employment at the King County Sheriff’s Office (KCSO) after
6 serving on active duty military. This retaliation allegedly occurred in how the KCSO handled a
7 neighbor’s complaint against him about a harassing email about her dog. As a result, KCSO
8 search his home, seized computers and cell phones, and placed Plaintiff under arrest and on
9 administrative leave. Plaintiff was ultimately exonerated of wrongdoing because it was his wife,
10 Katherine Tighe, who sent the email without his knowledge. *Id.*, pp. 4-9.

11 Katherine Tighe created a Google email account under a fictitious name and used it to
12 send an email to a neighbor with whom the Tighes had an ongoing dispute. Dkt. 35, First
13 Declaration of Donna Bond, p. 1 at ¶ 4; Exhibit 1. After the neighbor made an online complaint,
14 Defendant Scott Garnett determined the email fit the criteria for cyberstalking, a gross
15 misdemeanor under RCW 9.61.260. KCSO initiated a criminal investigation and an
16 administrative internal investigation. Sergeant Garnett assigned the criminal investigation to
17 Defendant Sarah Gerlitz, who determined through warrants served on Google and Comcast that
18 the email had been sent from an IP address registered to Plaintiff’s residence. On August 4,
19 2016, KCSO detectives executed a search warrant on the Tighe residence, retrieved the laptop
20 from which the email was sent, and Katherine Tighe confessed to creating the Google account
21 and sending the email in question. *Id.*, p. 2, ¶ 5; Exhibits 2 and 3. Katherine Tighe pleaded guilty
22 to disorderly conduct on October 3, 2017. *Id.*, p. 2, ¶ 5.

1 Plaintiff's alleges that KCSO took no action against his wife until a year later, after
2 Plaintiff joined in an internal complaint with a senior KCSO supervisor challenging the way
3 KCSO had conducted its investigation of Plaintiff. Plaintiff claims that only then did KCSO, in
4 retaliation, forward charges against his wife for misdemeanor prosecution. Dkt. 1-2, p. 9.
5 Thereafter, Plaintiff was found by independent medical personal to be "unfit for duty" allegedly
6 as a result of KCSO's actions, and was placed on family medical leave. *Id.*

7 DISCUSSION

8 A party may "obtain discovery regarding any nonprivileged matter that is relevant to any
9 party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).
10 Whether discovery is proportional to the needs of the case hinges on "the importance of the
11 issues at stake in the action, the amount in controversy, the parties' relative access to relevant
12 information, the parties' resources, the importance of the discovery in resolving the issues, and
13 whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* The
14 court must limit the extent of discovery that is, *inter alia*, unreasonably cumulative or
15 duplicative, outside the permitted scope of Rule 26(b)(1), or obtainable from another source that
16 is more convenient, less burdensome, or less expensive. *See* Fed. R. Civ. P. 26(b)(2)(C); *see*
17 *also, Fox v. State Farm Ins. Co.*, No. C15-0535RAJ, 2016 WL 304784, at *1 (W.D. Wash. Jan.
18 26, 2016) ("The court must limit discovery that is not proportional to the needs of the case.").

19 On a showing of good cause, the court may issue a protective order pursuant to Federal
20 Rule of Civil Procedure 26(c). *See* Fed. R. Civ. P. 26(c). "The party opposing disclosure has the
21 burden of proving 'good cause,' which requires a showing that specific prejudice or harm will
22 result if the protective order is not granted." *In re Roman Catholic Archbishop of Portland in*
23 *Oregon*, 661 F.3d 417, 424 (9th Cir. 2011).

1 Plaintiff has brought USERRA and WLAD discrimination claims, which require him to
2 establish, *inter alia*, that his status or activity was protected; his employer took an adverse action
3 against him; and that his status or activity was a motivating factor for the employer's adverse
4 action. *See, e.g., Sheehan v. Dep't of Navy*, 240 F.3d 1009, 1014 (Fed. Cir. 2001); *Alonso v.*
5 *Qwest Commc'ns Co., LLC*, 178 Wn. App. 734, 743 (2013). Plaintiff asserts that the information
6 requested is relevant to proving Defendants' discriminatory motivation as it compares
7 "Defendants' conduct in similar circumstances involving minor complaints against members of
8 the KCSO, and the responses to those complaints, including whether they obtained a search
9 warrant in similar or even more serious circumstances." Dkt. 36, p. 3. In Topic 8, Plaintiff
10 requests that Defendants provide an individual with knowledge to testify about:

11 (a) the number of allegations of domestic violence made against any KCSO
12 deputy in the last five years and (b) whether the allegation of domestic violence
13 resulted in (i) KCSO issuing any search warrant and (ii) recommending that the
14 King County Prosecutor's Office press criminal charges against the KCSO
15 deputy. In the event that there is information responsive to sub-part (b) of this
16 topic then this topic further seeks an individual with knowledge of the domestic
17 violence allegation that gave rise to the issuance of the search warrant and
18 recommendation for prosecution.

19 Plaintiff argues that the information sought in Topic No. 8 "is certainly relevant and
20 seeks good evidence of differential treatment that Mr. Tighe is entitled to examine. The request
21 seeks the number of times a KCSO deputy has been accused of Domestic Violence, and the
22 subsequent use of search warrants and recommendations of cha[r]ges." Dkt. 36 at 9.

23 As a general proposition, "comparator" evidence, or evidence that one was treated
differently than similarly situated employees because one complained, is relevant and
discoverable in a discrimination suit. *See, e.g., Lauer v. Longevity Medical Clinic, PLLC.*, 2014
WL 5471983 (W.D. Wash. October 29, 2014) (citing *McDonnell Douglas Corp. v. Green*, 411
U.S. 792, 804, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Chuang v. University of Cal. Davis*, 225

1 F.3d 1115, 1126 (9th Cir.2000). However, to be “similarly situated, employees must “be
2 similarly situated in all material respects.” *Moran v. Selig*, 447 F. 3d 748, 755 (9th Cir. 2006);
3 *Vasquez v. County of Los Angeles*, 349 F. 3d 634, 643 (9th Cir. 2003) (“Individuals are similarly
4 situated when they have similar jobs and display similar conduct”); *Hollins v. Atlantic Co., Inc.*,
5 18 F.3d 652, 659 (6th Cir. 1999)(to be similarly situated, an employee must have the same
6 supervisor, be subject to the same standards, and have been engaged in the same conduct).

7 Plaintiff fails to show how he is similarly situated to the broad class of individuals
8 encompassed within Item No. 8. This item requests records relating to allegations of “domestic
9 violence” over a five year period. As noted by Defendants, this request includes approximately
10 800 deputies doing different jobs, for different supervisors, in King County, unincorporated King
11 County, and in a dozen different cities and transit systems (KCSO provides public safety services
12 to all of unincorporated King County as well as the contract entities of Carnation, Sammamish,
13 Skykomish, Woodinville, Beaux Arts Village, Covington, Maple Valle, Muckleshoot Tribe,
14 Newcastle, Burien, SeaTac, Kenmore, Shoreline, King County Int’l Airport, King County Metro
15 Transit, and Sound Transit). Dkt. 33, p. 9-10. Plaintiff also fails to explain how allegations of
16 “domestic violence” crimes under RCW 10.99.020 are in any way similar to the cyberstalking,
17 gross misdemeanor under RCW 9.61.260, which prompted the investigation at issue.

18 Plaintiff essentially acknowledges that the information sought in Item No. 8 is not true
19 “comparator” evidence, but would be used to show how KCSO responded to matters involving
20 its own deputies in “far more serious circumstances [such] as domestic violence” to compare “to
21 the extraordinary actions they took against Mr. Tighe.” Dkt. 36 at 8. However, whether search
22 warrants were sought in factually dissimilar cases against persons not similarly situated to
23 Plaintiff is not probative of his discrimination claims. *See, e.g., Breiterman v. United States*

1 *Capitol Police*, 324 F.R.D. 24 (D.D.C. 2018) (citing *Wheeler v. Georgetown University Hosp.*,
2 812 F.3d 1109, 1116 (D.D.C. 2016) (Assertion by female officer in Title VII action that “many
3 male officers” received less discipline than female officers was insufficient to establish relevance
4 of dissimilar conduct; to be useful as comparator evidence, prior complaints must involve
5 misconduct similar to, or of comparable seriousness as, the alleged misconduct.).

6 Defendants have also shown that it will be unduly burdensome to retrieve the information
7 in Item No. 8. Dkt. 33, p.10-11; Dkt. 34, p. 2-5. Plaintiff provides no evidence to the contrary,
8 except to state that “Defendants admitted in conference that they could obtain that information
9 from the Sheriff’s Office, but declined to do so.” Dkt. 37, ¶ 7. Defendants’ counsel disputes that
10 it ever made such a representation. Dkt. 39, ¶ 4. Regardless of the parties’ dispute, a Rule
11 30(b)(6) notice is subject to limitations under Rule 26 which requires the information sought not
12 be unduly burdensome and disproportionate to the needs of the case. Here, Defendants have
13 provided testimony about the difficulty of retrieving the information from their existing
14 computer systems. KCSO has determined there are approximately 24,636 incident reports coded
15 “domestic violence” between October 24, 2013 and the present. Each entry would need to be
16 searched manually to determine if it involved any of the approximate 800 KCSO Deputies for
17 the relevant time period. Alternatively, KCSO would need to run a person search on each of the
18 800 deputies’ names for responsive information. Defendants estimate the process would take
19 several hours per deputy and several thousands of hours overall. Dkt. 34, Groce Decl., pp. 2-3, ¶¶
20 5-6. As there are no combination of fields which would allow the KCSO to search for domestic
21 violence cases which were also referred for prosecution, this information would also have to be
22 manually retrieved by reviewing each incident report and comparing it to records of the King
23 County Prosecuting Attorney’s Office. In addition, not all of the deputies who work for KCSO

1 live in the county and criminal complaints of domestic violence could be lodged in another
2 jurisdiction. *Id.*, Groce Decl., p. 4 at ¶12. KCSO also determined that there were approximately
3 2,189 entries in very general categories that might reasonably include all of the domestic
4 violence allegations made against all deputies, but each file would also have to be reviewed
5 individually to determine if it contained responsive information. *Id.*, Groce Decl., pp. 4-5, ¶¶ 9-
6 13.

7 The Court is also mindful that Defendants have already responded to written discovery
8 requests and produced a person with knowledge to testify on topics specifically aimed at flushing
9 out “comparator” evidence,” such as employment discrimination complaints brought against
10 KCSO; citizen complaints of nuisance and harassing emails and KCSO’s response to those
11 complaints; and number of search warrants obtained by KCSO in 2016 and 2017 in any
12 cyberstalking investigations. In addition to the written responses, three designees testified on
13 November 8, 2018 and Plaintiff was satisfied with these responses. Dkt. 39, Bond Decl., ¶ 3.

14 As it would be unduly burdensome and expensive for the County to undertake the manual
15 search necessary to obtain information in response to a request which seeks information that is
16 unlikely to be probative of Plaintiff’s claims, the Court finds that Defendants’ motion for
17 protective order as to Topic No. 8 should be granted.

18 Accordingly, it is **ORDERED**:

19 1. Defendants’ motion for protective order (Dkt. 33) is **GRANTED**; Plaintiff is
20 prevented from taking further deposition under Fed. R. Civ. P. 30(b)(6) of Defendants on Topic
21 No. 8.

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2. The Clerk shall send a copy of this Order to the parties.

DATED this 19th day of November, 2018.


BRIAN A. TSUCHIDA
Chief United States Magistrate Judge